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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/840,332	04/23/2001	Jerald A. Hammann	H238.101.101	4071

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EXAMINER

VAN DOREN, BETH

ART UNIT	PAPER NUMBER
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3623

DATE MAILED: 09/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/840,332

Applicant(s)

HAMMANN, JERALD A.

Examiner

Beth Van Doren

Art Unit

3623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 31-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 31-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date See cont. sheet.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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cont: Information Disclosure Statements: 20041108,20030612,20011207

DETAILED ACTION

1. The following is a non-final office action in response to communications received

08/08/05. Claims 1-30 have been canceled in response to the restriction requirement of 6/27/05.

Claims 33-35 have been amended. Claims 31-35 are now pending and addressed below.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 31, 32, 33, 34, and 35 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 2, 7, 12, 17, and 22 of copending Application No. 09/999,378. Although the conflicting claims are not identical, they are not patentably distinct from each other because the only modifications between the claims are the timing of the communications and the intention of the communications. Examiner points out that the limitation "wherein the service time is a time measure indicating a present or future first time when the service is available" of claims 31-35 is inherent to the other limitations of these claims. With regards to claim 31 of the current application, claim 31 recites "wherein the communication takes place prior to the assignment of other concurrently consumed and/or

Art Unit: 3623

utilized composite resources to the at least one potential user” which is not recited in claim 2 of the copending application. Both claims recite that a communication occurs concerning the composite resource with the intent to modify the demand or capacity of the composite resource. Therefore, this “wherein” limitation of claim 31 is merely reciting timing for such a communication. It is old and well known in the marketing arts to make an offer to a user for a first product/resource prior to the user purchasing a second product/resource in order to entice the user to purchase the first product instead of the second, competing product. Therefore, this timing of the communication would have been obvious to one of ordinary skill in the art at the time of the invention. Further, claim 2 of the copending application recites “wherein, if capacity exceeds demand for the at least one composite resource, the communication attempts to increase demand”. Both claims recite that the communications intent is to modify the demand or capacity of the composite resource, and it is old and well known in economics that if supply is greater than demand, demand must be increased or supply lowered. Hence, modifying the current application to include that the communication attempts to increase demand is respectfully considered obvious to one of ordinary skill in the art at the time of the invention.

Claims 32, 33, 34, and 35 of the current application and claims 7, 12, 17, and 22, respectively, of the copending application have the same, obvious modifications there between as claims 31 and 2. Therefore, although these conflicting claims are not identical, they are not patentably distinct from each other, as discussed above.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 101

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claims 31 and 34-35 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The basis of this rejection is set forth in a two-prong test of:

- (1) whether the invention is within the technological arts; and
- (2) whether the invention produces a useful, concrete, and tangible result.

For a claimed invention to be statutory, the claimed invention must be within the technological arts. Mere ideas in the abstract that do not apply, involve, use, or advance the technological arts fail to promote the “progress of science and the useful arts” (i.e. the physical sciences as opposed to social sciences, for example) and therefore are found to be non-statutory subject matter. For a process claim to pass muster, the recited process must somehow apply, involve, use, or advance the technological arts.

In the present case, claims 31 and 34-35 recite computer-based methods, however there is no specific recitation of any technology in the body of these claims linking any step’s functionality to a computer or other technological device. Mere recitation in the preamble (i.e. intended or field of use) or mere implication of employing a machine or article of manufacture to perform some or all of the recited steps does not confer statutory subject matter to an otherwise abstract idea unless there is positive recitation in the body of the claims. Therefore, since the steps of claims 31 and 34-35 do not specifically apply, involve, use, or advance a technological

Art Unit: 3623

art, it is respectfully submitted that the claimed invention is directed towards non-statutory subject matter.

Although the claimed invention produces a useful, concrete, and tangible result, since the claimed invention is not within the technological arts, as explained above, claims 31 and 34-35 are deemed to be directed towards non-statutory subject matter.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 31-35 are rejected under 35 U.S.C. 102(e) as being anticipated by Walker et al. (U.S. 6,298,331).

As per claim 31, Walker et al. teaches a computer-based method for yield management in human factor resource industries, comprising:

accepting transaction parameter values for composite resources, wherein each composite resource has associated therewith at least a service location and at least one of a service date and a service time (See figure 9, column 3, lines 27-42 and 55-65, column 6, wherein transaction parameter values are received comprising a location (values, for example, a bin, a store, etc.) and a service time (values, for example, reflecting start signal, time until expiration, etc.));

communicating at least a portion of the transaction parameter values for at least one composite resource to at least one potential user of the composite resource, the communication

Art Unit: 3623

attempting to modify at least one of the demand for the at least one composite resource and the capacity of the at least one composite resource, wherein at least one of the transaction parameter values communicated is a transaction price calculated using yield management techniques (See column 2, lines 30-55, column 3, lines 55-67, column 9, lines 30-50, column 11, lines 45-67, column 12, lines 10-34 and 40-60, and column 13, lines 5-15, wherein communication of values occurs. By communicating with a cashier at a pos terminal, and thereby communicating with the customer, the potential user is informed of the excess capacity of the food product in an attempt to modify demand. See column 3, lines 25-45, column 4, lines 1-15, column 5, lines 50-column 6, lines 15, column 7, lines 25-30 and 55-column 8, line 7, wherein yield is managed by the system by considering things such as age and location);

wherein the service time is a time measure indicating a present or future first time when the service is available (See figure 9, column 3, lines 27-42 and 55-65, column 6, wherein service time (values, for example, reflecting start signal, time until expiration, etc.) measure current and future times);

wherein the communication takes place prior to the assignment of other concurrently-consumed and/or utilized composite resources to the at least one potential user (See column 9, lines 30-50, column 11, lines 55-column 12, line 25 and 40-60, and column 13, lines 5-15, wherein the communication takes place prior to offering another composite good, as well as prior to actually transferring the other composite good to the user);

wherein the capacity of the at least one composite resource is a measure of the on-hand supply and/or availability, if applicable, of the at least one composite resource at a first time plus a measure of an ability to produce and/or make available additional quantities of the at least one

Art Unit: 3623

composite resource over a first time period beginning at the first time and ending at a second time (See figures 10B, 11, 14, column 2, lines 5-11, column 3, lines 35-55, column 7, lines 12-32 and 60-column 8, line 7, column 12, lines 27-35, wherein capacity is measured by the on hand and the ability to cook food for the time interval for which the forecast is being predicted); and

wherein the demand for the at least one composite resource is a measure of the on-hand consumption and/or utilization, if applicable, of the at least one composite resource at the first time plus a measure of an ability to consume and/or utilize additional quantities of the at least one composite resource over the first time period (See figures 10B, 11, 14, column 2, lines 5-11, column 3, lines 35-55, column 7, lines 12-32 and 60-column 8, line 7, column 12, lines 27-35, wherein demand is measured by considering already cooked (on-hand) food plus a measure of the customers consumption of food (on-hand and additional) over a time interval).

Claim 32 is substantially similar to claim 31 and is therefore rejected using the same art and rationale set forth above.

Claim 33 recites substantially similar elements to claim 31. Therefore, teaches claim 33, as set forth above in the rejection of claim 31. Walker et al. further teaches a storage device storing a program and a processor connected to the storage device and controlled by the program, the processor operative with the program (See at least figures 2-4 and column 5, lines 15-50).

Claim 34 is rejected using the same art and rationale set forth above in the rejection of claim 31. Walker et al. further teaches storing the data related to the individual resources and the associated composite resources (See figure 4, column 4, lines 1-15, column 5, line 50-column 6, line 20, column 8, lines 50-65, column 9, lines 30-40, column 12, lines 10-35, wherein data related to individual resources and the composite resources are stored);

Art Unit: 3623

constructing internal data structures which link each of the individual resources to associated composite resources and link each of the composite resources to associated individual resources (See column 7, lines 25-35 and 60-67, column 8, lines 1-19 and 39-65, column 9, lines 30-50, and column 12, lines 20-35, wherein individual resources and composite resources are linked in a database).

Claim 35 recites substantially similar elements to claim 31. Therefore, teaches claim 33, as set forth above in the rejection of claim 31. Walker et al. further teaches receiving a responding communication from at least one user binding the at least one composite resource with specified transaction parameter values (See column 2, lines 45-55, column 11, lines 45-67, column 12, lines 10-34 and 40-60, wherein the customer purchases the food product via the cashier, the food product at time of purchase associated with specified transaction parameter value, such as price, bin, age, etc.).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Srinivasan et al. (U.S. 2001/0051932) teaches transaction management and yield management techniques.

Srinivasan et al. (U.S. 2002/0042738) discloses transaction management and yield management techniques.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Beth Van Doren whose telephone number is (571) 272-6737.

The examiner can normally be reached on M-F, 8:30-5:00.

Art Unit: 3623


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on (571) 272-6729. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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September 20, 2005


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